

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PHILLIP LEWIS,

Plaintiff,

vs

1:04-CV-152

CITY OF ALBANY POLICE DEPARTMENT and
WILLIAM BONANNI,

Defendants.

APPEARANCES:

OF COUNSEL:

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and PRIORE, LLP
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DAVID N. HURD
United States District Judge

MEMORANDUM-DECISION and ORDER

I. INTRODUCTION

On May 7, 2009, the United State Court of Appeals for the Second Circuit entered a summary order affirming the judgments filed in plaintiff's favor on May 20, 2008, and on

July 31, 2009, it denied defendants' joint petition for rehearing en banc. The Mandate was issued on July 22, 2009, and was filed in the Northern District of New York on July 29, 2009.

Plaintiff Phillip Lewis ("Lewis" or "plaintiff") timely filed an application for attorney's fees and costs pertaining to the appeal pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 1920, and Fed. R. Civ. P. 54(d). The City of Albany expressly declined to oppose the application for attorney's fees and costs. Defendant Bonanni did not respond. The application was taken on submission without oral argument.

II. DISCUSSION

Costs other than attorney's fees "should be allowed to the prevailing party." Fed. R. Civ. P. 54(d). Pursuant to 42 U.S.C. § 1988, attorney's fees may be awarded to a prevailing party in, inter alia, civil rights litigation as part of the costs imposed. A prevailing plaintiff in civil rights litigation is entitled to an award of attorney's fees and costs incurred in defending a judgment in his favor on appeal. Murphy v. Lynn, 118 F.3d 938, 952-53 (2d Cir. 1997).

In this case, plaintiff successfully defended the judgment in its favor before the United States Court of Appeals for the Second Circuit. Additionally, defendants' petition for a rehearing en banc of the decision against them was denied by the appeals court. Neither defendant opposes plaintiff's application.

III. CONCLUSION

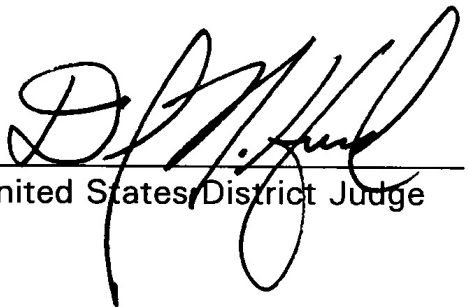
Upon careful review of plaintiff's submissions in support of his application, it is determined that plaintiff is entitled to attorney's fees and costs in the total amount of \$17,111.60 (\$16,668.00 attorney's fees; \$423.60 costs).

Accordingly, it is

ORDERED that

1. Plaintiff is awarded attorney's fees and costs in the total amount of \$17,111.60;
2. Defendants City of Albany Police Department and William Bonanni are jointly and severally liable for \$17,111.60 in attorney's fees and costs; and
3. The Clerk of the Court is directed to enter supplemental judgments in favor of plaintiff Phillip Lewis and in the amount of \$17,111.60 against defendants City of Albany Police Department and William Bonanni.

IT IS SO ORDERED.



United States District Judge

Dated: July 29, 2009
Utica, New York.